IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4102/2005, 4114/2005, 4115/2005, 4116/2005 and 4118 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
JANUARY 18, 2007.

Writ Petitions No. 4114 of 2005 and 4118 of 2005 are not on board, however, taken on board with the consent of the parties and are being disposed of with other writ petitions mentioned above.

In all these writ petitions, the employer – Municipal Council has challenged the common order dated 23.2.2005 passed by the Industrial Court, Chandrapur, directing them to regularise services of the respondent – employees and to confer upon them the status of permanent employees from the date of filing of their complaints. The complaints have been filed sometimes in the year 1987.

Considering the nature of controversy, writ petitions are heard finally with the consent of Shri Ghare, learned

counsel for the petitioners, Shri Sonbhadre, learned counsel for respondent No.2 and learned AGP for respondents No. 1, 3 & 4.

Shri Ghare, learned counsel contends that the employment with the Municipal Council is public employment and regularisation in its service is possible only when there exists permanent vacancy and if the incumbent has entered the services through prescribed channel. He relies upon the Constitutional Bench judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka vs. Umadevi, reported at AIR 2006 SC 1806. He also places reliance upon the subsequent judgment in the case of Haryana State Electronics Corporation vs. Mamni, reported at 2006 II CLR 1047. He contends that the controversy is squarely covered by these judgments.

Shri Sonbhadre, learned counsel for the respective employees, however, contends that here the State Government has already taken a policy decision to regularise the services of such employees and the Industrial Court has also made reference to such policy decision. He contends that in view of this

policy decision only the Industrial Court has reached a particular conclusion.

The learned AGPs appearing for respondents No. 1, 3 & 4 support the arguments of the petitioners.

The perusal of impugned order however reveals that Industrial Court has not made any reference to any particular policy decision of State Government in the matter. Shri Sonbhadre, learned counsel is seeking time to point out such policy decision. In the circumstances, I find that the interest of justice will be met by directing the Industrial Court to consider the controversy afresh in the light of such circulars, if any. In that event the present respondent No.2 will get an opportunity to place before the Industrial Court any such circular and petitioner will also get an opportunity to state about the applicability or otherwise thereof.

Respondent No.2 – employees are reported to be in service since 1981. Considering the fact that Respondent No.2 – employees are in the service from last 15 to 16 years, I find that in the light of judgments mentioned above, it will be appropriate to

remand the matter back to Industrial Court to consider the controversy in the light of the alleged policy decision of the State Government.

Hence, the impugned orders dated 23.2.2005 passed by the learned Industrial Court, Chandrapur, are quashed and set aside. ULP Complaints filed by Respondent No.2 – employees are restored back to said Court. The petitioners and Respondents No. 2 are at liberty to amend their pleadings and to lead further evidence, if required, in their respective cases.

As the matter is old and being sent back, the Industrial Court is directed to decide the controversy as early as possible and in any case within a period of eight months from the date of communication of this order to it. Till then parties shall maintain status quo. The parties to appear before the Industrial Court at Chandrapur on 5.2.2007.

Writ Petitions are disposed of accordingly. There shall be no order as to costs.

JUDGE

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